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OCT 20 1997

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

In the matter of

**Application of BellSouth Corporation,)
BellSouth Telecommunications, Inc., and)
BellSouth Long Distance, Inc., for Provision)
of In-Region, InterLATA Service in the)
State of South Carolina)
_____)**

**CC Docket
No. 97-208**

**COMMENTS OF AT&T CORP.
IN OPPOSITION TO BELL SOUTH'S
SECTION 271 APPLICATION**

APPENDIX - VOLUME VI

**APPENDIX TO COMMENTS OF AT&T CORP.
IN OPPOSITION TO BELL SOUTH'S
SECTION 271 APPLICATION**

TAB	AFFIDAVIT	SUBJECT(S) COVERED
A	William J. Baumol	Public Interest
B	Robert H. Bork	Public Interest
C	Jay M. Bradbury	Operations Support Systems
D	James Carroll	AT&T Market Entry
E	Ray Crafton	Unbundled Network Elements: Combinations
F	R. Glenn Hubbard and William H. Lehr	Public Interest
G	Patricia A. McFarland	Resale Pricing and Restrictions
H	Patricia A. McFarland	Section 272 compliance
I	Kenneth P. McNeely	SCPSC Proceedings
J	C. Michael Pfau	Operations Support Systems: Performance Measurements
K	James A. Tamplin, Jr.	Unbundled Network Elements
L	Don J. Wood	Unbundled Network Elements: Pricing

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Application of BellSouth Corporation,)
BellSouth Telecommunications, Inc.,)
And BellSouth Long Distance, Inc. for) CC Docket No. 97-208
Provision of In-Region, InterLATA)
Services in South Carolina)

AFFIDAVIT

OF

RAYMOND G. CRAFTON

ON BEHALF OF

AT&T CORP.

AT&T EXHIBIT E

Table of Contents

INTRODUCTION	1
SCOPE OF TESTIMONY AND SUMMARY	4
I. THE PROCOMPETITIVE BENEFITS OF UNBUNDLED NETWORK ELEMENTS	5
II. BELLSOUTH HAS NOT MADE AVAILABLE COMBINATIONS OF UNBUNDLED NETWORK ELEMENTS	9
A. BellSouth Refused To Comply With This Commission's Prohibition Against Separating Network Elements	9
B. BellSouth Has Not Provided CLECs With The Information They Need To Recombine Network Elements	17
III. BELLSOUTH IS NOT READY TO PROVIDE NONDISCRIMINATORY ACCESS TO EXISTING COMBINATIONS OF NETWORK ELEMENTS	20
A. BellSouth Has Frustrated AT&T's Efforts to Test UNE Combinations	21
B. BellSouth is Not Prepared to Provide Access to UNE Combinations	23

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Services in South Carolina)	

**AFFIDAVIT OF
RAYMOND G. CRAFTON
ON BEHALF OF AT&T CORP.**

Raymond Crafton, being first duly sworn upon oath, does hereby depose and state as follows:

INTRODUCTION

1. My name is Raymond Crafton. My business address is 1200 Peachtree Street, NE, Atlanta, Georgia 30309.
2. I am the Business Manager for AT&T's Southern States Local Service Organization. My division is responsible for managing the portfolio of local and exchange access products AT&T hopes to introduce in the nine states served by BellSouth -- Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. I am responsible for negotiations with BellSouth and other suppliers and partners

FCC DOCKET CC NO. 97-208

AFFIDAVIT OF RAYMOND G. CRAFTON

that support AT&T's local market entry and management of AT&T's local market entry program. I participated in the negotiation of AT&T's interconnection agreement with BellSouth, and I have been involved in negotiations with BellSouth concerning implementation of that agreement.

3. I earned a Bachelor of Science degree in Mathematics with a Minor in Computer Science at the University of Maryland in 1972. In 1973 I joined Bell Laboratories as a member of the technical staff, where I was responsible for designing telephone operator systems and performing economic and financial analyses on those designs. In 1974, I earned a Master of Science in Operations Research, a field in which mathematical techniques are applied to solving complex business problems. From that time until 1980, I continued as a member of the technical staff of Bell Laboratories, where I participated in the design of various telephone operator system enhancements such as Automated Coin Toll Service (which automates the quotation of rates and collection of coins on coin sent paid calls); automatic calling card service (which allows customers to dial their own calling card calls using a personal identification number without operator assistance); and the operator systems enhancements necessary to handle operator services calls from cellular mobile customers. In late 1980, I joined the Traffic Network Planning Department of the AT&T General Departments, where I led the development of computerized planning tools used by the Bell Operating Companies ("BOCs") to plan optimal deployment of telephone operator systems. In 1981 I was promoted to District Manager-Traffic Network Planning and began to lead the

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

development of planning guidelines and computer tools for the toll switched network. At that time, I also assumed responsibility for project management of Dynamic Non-Hierarchical Routing ("DNHR"), which allows AT&T to reduce the number of trunk groups and facility mileage in its inter-toll network by more flexibly routing traffic over idle paths in the network. While managing DNHR, I was also responsible for AT&T's joint planning and joint ownership program with independent telephone companies, which ended with AT&T's divestiture of the Regional Bell Operating Companies.

4. After divestiture, I assumed responsibility for AT&T network architecture and recommended applications and enhancements in the 4ESS, 5ESS, Digital Access and Cross-connect System and other systems to support AT&T's switched and dedicated services. During this assignment I developed technical regulatory analyses to support Computer Inquiry II and the Open Network Architecture concept for enhanced services. From 1988 to 1993 I led the project management of all technology for AT&T's Signaling System No. 7 ("SS7") network and conducted the first interconnection of an inter-exchange carrier and a local exchange carrier signaling network between AT&T and BellSouth. In 1993 I became responsible for strategic access planning, which focused on improving the quality and reducing the cost of interexchange access. In 1994 I earned a Masters degree in Business Administration from Columbia University. And in 1995 I was promoted to Division Manager-Customer Connectivity Planning, a position responsible for

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

developing the strategies, methods, computer tools, and plans for AT&T's local and access business.

SCOPE OF TESTIMONY AND SUMMARY

5. This affidavit discusses BellSouth's refusal to provide AT&T with unbundled network elements ("UNEs") in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996 (the "Act"). Specifically, I will describe how BellSouth refused to provide access to unbundled network elements in the combinations in which they currently exist in its network, and insisted instead on separating those elements in order to force CLECs (and their customers) to incur the expense, inconvenience, and delay necessary to recombine them. I will also discuss how BellSouth has not made available the technical specifications, methods or procedures that CLECs would need in order to do such recombining. Finally, I will describe the significant limitations that BellSouth imposed on AT&T's attempts to test BellSouth's ability to provision and bill for combinations of unbundled network elements in Florida, an experience which serves further to illustrate how much BellSouth must still do before combinations of network elements, whether combined by CLECs or BellSouth, will truly be available to CLECs.¹

¹ BellSouth's refusal to provide nondiscriminatory access to individual network elements is described in the separate affidavit of James A. Tamplin, Jr., filed simultaneous herewith.

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

I. THE PROCOMPETITIVE BENEFITS OF UNBUNDLED NETWORK ELEMENTS.

6. AT&T's preferred strategy for entering local telecommunications markets is to use combinations of unbundled network elements purchased from incumbent local exchange carriers ("ILECs") at total element long run incremental cost ("TELRIC")-based prices. One such combination consists of the loop, network interface device, switching, shared transport, signaling and call-related data bases, tandem switching, and operations support systems that are currently used by BellSouth to serve its existing customers. The prices for these unbundled network elements are either flat-rated or usage-sensitive, or both. (AT&T plans to provide its own operator services and directory assistance with this UNE combination or, alternatively, purchase operator and directory assistance from BellSouth.) In contrast to purchasing ILEC services for resale, purchasing combinations of unbundled network elements allows a new entrant to offer a full and flexible range of services to both end users and to other carriers at competitive prices, creating meaningful competition in the provision of retail and exchange access services.

7. Using combinations of unbundled network elements has very significant advantages and disadvantages over resale as an entry strategy for CLECs, including the following:

- a. **Service, Feature, and Innovation Competition.** In a resale environment, a CLEC can offer end-user customers only the identical services that the ILEC offers to its end-user customers. The CLEC's

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

competitive service offerings are thus severely limited by the ILEC's tariff design and offerings. In a UNE environment, however, the CLEC is able to offer new features and services using the full functionality of the unbundled local switch, as well as AIN capabilities.² This allows the CLEC to offer a flexible range of products, including bundles of features -- both features that are currently offered by the ILEC and features that are available in the switch or through AIN but not offered by the ILEC -- which may be different than the ILEC's service offerings.

- b. **Access Service Competition**. In a resale environment, the ILEC continues to provide and charge for all access services, retaining its historic monopoly over these services. In a UNE environment, the CLEC is entitled to provide and charge for access services, thereby providing competition that is likely to reduce access charges to interexchange carriers ("IXCs") and long distance rates to end-users.³

² AIN, or Advanced Intelligent Network, is a network architecture that relies on centralized data bases, known as service control points ("SCPs"), to provide logic, information, and instructions to a switch on the routing and handling of a telephone call. That is, a switch may contain a software "trigger" that prompts the switch to send a query via the SS7 network to the SCP to obtain information before it further processes the call. AIN therefore allows local service providers to develop new services themselves, independent of the switch vendors, which have traditionally developed new services in switch-based software.

³ See In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In
(continued...)

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AFFIDAVIT OF RAYMOND G. CRAFTON

- c. **Transition to Facilities-Based Competition.** As compared to a resale environment, the UNE environment also facilitates a CLEC's transition to facilities-based competition. First, in a UNE environment, a CLEC can seamlessly replace an unbundled network element with a facility or switch that it builds for its own use. Second, in a UNE environment, the CLEC generally should receive a bill that itemizes the cost associated with each network element. This will better enable the CLEC to determine, element-by-element, when it becomes economical to replace the unbundled network elements with the CLEC's own facilities and will also make the ordering and billing transition easier, thereby promoting the development of facilities-based competition.
- d. **Relative Risks.** It should be emphasized that a CLEC that pursues a UNE strategy faces significantly greater risks than one that pursues resale. For example, unlike a reseller, a CLEC must incur the substantial start-up costs associated with negotiating interconnection agreements with the other LECs operating in the market, filing tariffs (e.g., access tariffs), establishing billing account relationships with the

³ (...continued)

Michigan, CC Docket No. 97-137 (August 19, 1997) ("Ameritech Michigan"), ¶ 20; In the Matter of Access Charge Reform, CC Docket 96-262, First Report and Order (May 16, 1997) ("Access Charge Order"), ¶ 7.

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

IXCs operating in the area, and developing the operations support systems needed to generate bills for access charges and reciprocal compensation. The CLEC must incur these costs before it has a single customer, and without any assurance that the market response to its offerings will allow it to recover these costs. CLECs also face significant risk with respect to unbundled network elements that are priced on a usage-sensitive basis (such as components of the unbundled local switch, shared transport, databases, and tandem switches), because -- for local calling -- the CLEC must offer its customers a flat-rated local calling plan comparable to the ILEC's in order to compete with the ILEC, and is therefore at risk that its end-users will originate a large number of flat-rated calls for which the CLEC will have to pay the ILEC on a usage-sensitive basis, but receive no incremental revenue from its end-user customers. In a resale environment, the CLEC does not face these risks. A reseller has greater cost stability because the relationship between its revenues and costs does not vary with its end-users' calling patterns.

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

II. BELLSOUTH HAS NOT MADE AVAILABLE COMBINATIONS OF UNBUNDLED NETWORK ELEMENTS.

8. Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act") requires ILECs to provide access to network elements "on an unbundled basis" and "in a manner that allows requesting carriers to combine the elements in order to provide . . . telecommunications service." 47 U.S.C. § 251(c)(3). Through the date of BellSouth's section 271 application, this Commission's rules required BellSouth to provide access to its network elements without first separating them. E.g. 47 C.F.R. § 315(b). As described below, BellSouth at no point complied with that rule. At the same time, while BellSouth insisted that CLECs seeking to use its network elements must do the combining themselves, BellSouth never provided CLECs with the specifications, methods, or procedures to do so. As a consequence, regardless of who is to do the combining, BellSouth has not made available to CLECs access to BellSouth's network elements in accordance with the Act.

A. BellSouth Refused To Comply With This Commission's Prohibition Against Separating Network Elements.

9. As the Commission has recognized, local entry by means of unbundled network elements is one of three distinct entry paths that the Act makes available.⁴ The

⁴ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499, 15,508-15,509 (1996) ("Local Competition Order"), ¶¶ 11-12, affirmed in part and vacated in part sub nom. Competitive Telecommunications Assn. v. FCC, 117 F.3d 1068 (8th Cir. 1997), aff'd in part and vacated in part sub nom. Iowa Utilities Board v. FCC, No. 96-3321 et al., 120 F.3d 753 (8th Cir. 1997) ("Iowa Utilities Board"), Order on Reconsideration, 11 FCC Rcd 13042

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FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

Commission therefore adopted rules that require an ILEC to permit requesting carriers to combine the elements without restriction: "[a]n incumbent LEC shall not impose restrictions or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting carrier to offer a telecommunications service in the manner the requesting carrier intends." 47 C.F.R. § 51.309. The Commission's rules also explicitly prohibited ILECs from separating network elements that are currently combined by the ILEC, unless a carrier specifically requests otherwise. 47 C.F.R. § 51.315(b); see Local Competition Third Order on Reconsideration, ¶ 44; Ameritech Michigan Order, ¶ 336.⁵ Chairman Hundt emphasized the importance the Commission places on "incumbents making available to new

⁴ (...continued)

(1996)("Local Competition First Reconsideration Order"), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996)("Local Competition Second Reconsideration Order"), Third Order on Reconsideration and Further Proposed Rulemaking, FCC 97-295(rel. August 18, 1997)(Local Competition Third Reconsideration Order), further recon. pending; see also Testimony of Reed E. Hundt, Chairman, Federal Communications Commission on The Telecommunications Act: An Anti-trust Perspective, Before the Subcommittee on Antitrust, Business Rights and Competition of the Senate Committee on the Judiciary (September 17, 1997) at 3; Local Competition Third Reconsideration Order (Separate Statement of Chairman Reed Hundt).

⁵ As Chairman Hundt explained:

When a BOC is supplying network elements or services to competitors, it must make available those elements and services on the same nondiscriminatory basis it provides to itself. Because incumbents characteristically use these elements in combination, incumbents must therefore offer the elements in combination to their competitors in order to meet the requirements of section 271.

Ameritech Michigan (Separate Statement of Chairman Reed Hundt) (emphasis added).

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

entrants their network elements on a combined basis," and specifically warned that "[w]here the purpose or effect of moves by an incumbent LEC to break apart currently combined elements is to create a barrier to competition, we will take action to tear down or prevent the erection of such barriers." Local Competition Third Order on Reconsideration (Separate Statement of Chairman Reed Hundt).

10. These rules were not stayed by the Eighth Circuit, and were in force and fully applicable to BellSouth through September 30, 1997, the date that it filed its Section 271 application with this Commission. Nevertheless, despite the Commission's rules, BellSouth refused to provide CLECs with access to unbundled network elements as they are currently combined in BellSouth's network. As BellSouth stated in its brief in support of its Application, BellSouth's policy was to treat all requests for "pre-combined" elements as requests for resale. Brief in Support of Application by BellSouth For Provision of In-Region, InterLATA Services in South Carolina at 39-40.

11. BellSouth's SGAT also reflects this position. Under BellSouth's SGAT:

CLECs may combine BellSouth network elements in any manner to provide telecommunications services. BellSouth will physically deliver unbundled network elements where reasonably possible, e.g., unbundled loops to CLEC collocation spaces, as part of the network element offering at no additional charge. Additional services desired by CLECs to assist in their combining or operating BellSouth unbundled network elements are available as negotiated.

BellSouth SGAT, II., F.1 (September 19, 1997). In describing an identical provision before the Florida Public Service Commission, Mr. Varner said with respect to unbundled network

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

elements: "We will not combine them for you. We will terminate them in your collocation space and you can combine them yourself." ⁶

12. Indeed, BellSouth further asserted that if a CLEC orders unbundled network elements that are already combined in its network, BellSouth will separate them before filling the CLEC's order. BellSouth will take apart loops, switches, and other network elements, and require CLECs to reconnect them, generally in "collocated space" that the CLEC must rent from BellSouth. BellSouth described the practical effect of its position in testimony before the Florida Public Service Commission on an identical SGAT provision:

Q. If, in fact, [BellSouth] were serving a customer today and AT&T comes to you and wants to serve that customer using unbundled network elements and AT&T asks to use the loop and port that you already have connected to that customer, are you going to disconnect the loop and port and require AT&T to reconnect it?

A. If that's all that AT&T, or the carrier requested, yes, because at that point we would provide the loop and we would provide the port, and AT&T, or whoever the CLEC is in that case, would reconnect them; so they would have to be -- if they happened to be the same ones connected, they would have to be taken apart.⁷

⁶ In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996, Docket No. 960786-TL, Transcript of Testimony of Alphonso J. Varner (September 2, 1997) at 346 (Attachment 1).

⁷ In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996, Docket No. 960786-TL, Transcript of Testimony of Robert C. Scheye (September 2, 1997) at 622 (Attachment 2).

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

13. There is no technical, economic, or policy justification for separating network elements that are currently combined in BellSouth's network. If a CLEC wins an existing BellSouth customer and proposes to provide the service using the existing combination of loop, switching, and other network elements, no change in the physical configuration of the facilities is required. The change of local service providers can be effected quickly and efficiently, with little more than appropriate entries in BellSouth operations support systems. I am not aware of any technical or engineering reason why BellSouth could not provide AT&T with access to unbundled network elements as they currently are combined in BellSouth's network. There certainly is no legitimate basis for breaking the elements apart and requiring competitors to reassemble them. The sole purpose for BellSouth's stated practice of separating network elements that are already combined is to increase prices to competitors and consumers, and delay, if not foreclose, entry through unbundled network elements.

14. Under BellSouth's approach, a very simple transaction becomes a major project, requiring disconnection and reconnection of service, each time one of its customers attempts to obtain local service from a CLEC. BellSouth intends to treat orders for combinations of unbundled network elements as "designed services" or "special services."⁸

⁸ In a September 15, 1997, report to the Department of Justice, BellSouth admitted:

Many of the UNEs and UNE-combinations will, indeed, be handled by BellSouth as designed services. In some cases, this will always be true due to the nature or complexity of the circuits or services involved. In certain cases, however, UNEs and UNE-combinations must currently be handled as designed services due to OS

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FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

This has tremendous practical implications for both the CLEC and its customers. For example, maintenance and repair trouble reports on "designed services" will be handled manually or through the BellSouth Work Force Administration - Control ("WFA-C"), not the CLEC Trouble Analysis Facilitation Interface ("TAFI"), which is used by BellSouth for its residential and business POTs customers. Consequently, CLEC customers served through UNE combinations will not receive the benefit of rapid trouble report clearance through the Mechanized Loop Testing ("MLT") system, which today allows BellSouth to resolve 85% of all trouble reports on "non-designed services" from its own retail customers while the customer is still on the line. See Affidavit of William N. Stacy, Exhibit 52 (BellSouth Local Competition Operational Readiness: Prepared for United States Department of Justice) (September 15, 1997) at 61-62, 67-69.

15. BellSouth has also made it clear that if a CLEC is unwilling to accept BellSouth's practice of separating network elements ordered in existing combinations, or BellSouth's plan to handle such orders as "designed" or "special" services, BellSouth will treat the CLEC's order as one for resale. In BellSouth's view, treating orders for combinations of unbundled network elements as if they were orders for resale has several significant implications. First, BellSouth will bill CLECs at wholesale rates, either local or intraLATA

⁸ (...continued)

[operations support] constraints in BellSouth's legacy support systems.

Affidavit of William N. Stacy, Exhibit 52 (BellSouth Local Competition Operational Readiness: Prepared for United States Department of Justice) at 54-55.

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

toll. Second, BellSouth will continue to bill interstate and intrastate access charges to interexchange carriers ("IXCs") on calls to or from CLEC customers, and therefore BellSouth believes it is unnecessary to provide CLECs with access records necessary to bill access charges. Third, BellSouth will continue to bill other carriers reciprocal compensation for terminating calls to CLEC customers, and therefore BellSouth believes it is unnecessary to provide CLECs with the usage and billing data necessary to bill reciprocal compensation.⁹

16. For example, in proceedings before the Alabama commission, Mr. Varner explained BellSouth's position on access charges as follows:

Q. Is it Bell's position that when a competitor purchases a combination of a loop and a switch, that competitor does not get to keep the access that it will be providing through that switch?

A. No, that's not our position. Our position is that under that situation what the carrier has purchased is resale of basic local exchange service, so they are not providing the access. BellSouth is still providing the access. What the carrier has purchased is resale of local exchange service, and it should be treated the same as resale of local exchange service since that is, in fact, what it is.

Q. I think we might have been at cross-purposes there on that question. My question was, when the CLEC purchases the loop and the switch, is it BellSouth's position that the CLEC will not be able to collect access charges to the functions of the switch that it's providing.

A. And, again, I would say that they are not providing the functions of the switch. What they are providing is the -- what they are receiving is basic local exchange service, which they are reselling.

⁹ See Letter from Mark L. Feidler (BellSouth) to William J. Carroll (AT&T) (September 12, 1997) (Attachment 4); Letter from Mark L. Feidler (BellSouth) to A. J. Calabrese (AT&T) (May 29, 1997) (Attachment 14).

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

Q. When a competitor purchases a loop and a switch, it's still buying a switch; correct?

A. No. It is buying basic local exchange service. It's not buying unbundled elements. It's buying basic local exchange service which is available for resale.¹⁰

17. Mr. Varner's explanation of BellSouth's position on access charges also shows that BellSouth's view of what constitutes a service that "duplicates" or "replicates" a BellSouth retail service seems to reach any combination of an unbundled loop and a switch, regardless of the services provided. For example, BellSouth has made clear that AT&T's use of its own operators and directory assistance would not suffice to distinguish AT&T's service from one that "duplicates" BellSouth's; nor would the offering of different vertical features distinguish AT&T's service.¹¹ Moreover, treating orders for combinations of UNEs as if they were orders for resale also means that BellSouth will not permit CLECs to provide services using the vertical features of the unbundled switching element, except those features BellSouth provides as retail services.

¹⁰ In re: BellSouth Telecommunications, Inc., Docket No. 25835 (AL PSC) (August 18, 1997), Testimony of Alphonso Varner, Transcript 261-63 (emphasis added) (Attachment 3).

¹¹ See, e.g., BellSouth South Carolina SGAT, II., G. (August 4, 1997). As initially approved by the South Carolina commission, BellSouth's SGAT included the following sentence: "CLEC provisioning of purely ancillary functions or capabilities, such as operator services, Caller ID, Call Waiting, etc., in conjunction with combinations of BellSouth unbundled elements will not serve to distinguish a CLEC service from an existing BellSouth tariffed service." Because BellSouth does not offer to provide combinations of unbundled network elements under its revised SGAT, BellSouth deleted this provision. BellSouth has given no indication that its view of the scope of CLEC services that "duplicate" BellSouth services has changed.

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

18. Thus, even after the Commission adopted its rules prohibiting incumbent LECs from separating network elements except upon request from a CLEC, and throughout the period those rules were in effect and binding upon BellSouth and other incumbent LECs (including through the date of BellSouth's application), BellSouth refused to comply with the Commission's rules. As a consequence, as discussed further below in Part III, AT&T was unable, despite repeated and persistent efforts, to make significant progress with BellSouth in attempting to develop the capability to use BellSouth's network elements to provide telecommunications services to local customers.

B. BellSouth Has Not Provided CLECs With The Information They Need To Recombine Network Elements.

19. After BellSouth filed its section 271 application with the Commission, the Eighth Circuit, on rehearing, vacated the Commission's rule that prohibited incumbent LECs from insisting, as BellSouth had done, upon separating network elements. At the same time, however, the Eighth Circuit confirmed that "the Act requires incumbent LECs to provide elements in a manner that enables the competing carriers to combine them." Iowa Utilities Board v. FCC, Order on Petition For Rehearing at 2 (8th Cir. Oct. 14, 1997).

20. Despite its endorsement of the Eighth Circuit's decision, BellSouth has not taken the steps necessary "to provide elements in a manner that enables the competing carriers to combine them." Id. All BellSouth has done is to state, in its recent revision (September 19, 1997) of its SGAT, that it will permit CLECs to place their own equipment in collocated space, to be made available on a first-come, first-served basis, which the CLEC can

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

then use to reconnect its new customers' loops with an unbundled port. SGAT II., B., 6.

This statement is not sufficient, in my judgment, to satisfy BellSouth's obligations under the Act, for two independent reasons.

21. First, any requirement that the CLEC install its own equipment and purchase collocated space would be inconsistent with the Eighth Circuit's holding that CLECs need not own or control any portion of the network in order to take advantage of their statutory right to reassemble the incumbents' network elements. As the Eighth Circuit stated in its initial decision, the Act does not require "a competing carrier to own or control some portion of a telecommunications network before being able to purchase unbundled elements." Iowa Utilities Bd. v. FCC, 120 F.3d 753, 814 (8th Cir. 1997). On rehearing, the Eighth Circuit further explained that it was unpersuaded by concerns that LECs might be unwilling to afford CLECs direct access to their networks in order "to prevent competing carriers from interfering with their networks." Order on Rehearing at 2. The Court then stated that "the fact that the incumbent LECs object to this rule indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundled elements for them." Id. To comply with the Act, therefore, BellSouth must allow CLECs "access to [its] network" sufficient to enable them to recombine BellSouth's network elements without insisting upon collocation or other requirements that compel CLECs to own or control a portion of a telecommunications network, and that serve to limit the ability or speed with which CLECs enter the market. BellSouth has not offered to do that.

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

22. Second, BellSouth has not begun to take the steps necessary to make it possible, as a practical matter, for CLECs to take advantage of their right of access to BellSouth's network in order to recombine BellSouth's network elements. The methods and procedures CLECs are to use in recombining each element, and the terms and conditions applicable to such access, if any, that BellSouth may seek to impose, are nowhere set forth by BellSouth. BellSouth has not even provided AT&T with the technical specifications that AT&T or any carrier would need in order to use the interim Phase I EDI interface (or any other interface) to order service for customers through CLEC-recombined elements. As a result, BellSouth has not yet made it possible for CLECs to recombine network elements to provide service to customers.

23. As discussed below, AT&T's experience with BellSouth in attempting to implement the relatively more straightforward alternative of serving customers with existing combinations of network elements reveals that there are a host of practical implementation questions that must be resolved before a CLEC can, as a practical matter, use unbundled network elements to serve significant volumes of customers on competitively viable terms. Many of these issues will also arise in the context of CLEC-combined elements, and the overall number and complexity of such issues will increase to the extent the BOC insists on separating individual elements and having the CLEC recombine them. Because BellSouth has not begun to work through any of these issues yet with any carrier, it cannot legitimately claim

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF RAYMOND G. CRAFTON

to have made available to CLECs the ability to recombine its network elements to provide telecommunications service.

III. BELLSOUTH IS NOT READY TO PROVIDE NONDISCRIMINATORY ACCESS TO EXISTING COMBINATIONS OF NETWORK ELEMENTS.

24. In light of its position that it has no enforceable legal obligation to provide unbundled access to existing combinations of network elements, BellSouth refused to take the technical steps that are necessary for BellSouth to provide them. That BellSouth has even pretended to be willing to participate in joint testing reflects the fact that the Kentucky Public Service Commission unequivocally ordered BellSouth to make UNE combinations available at cost-based rates. Nevertheless, there has been no meaningful progress to date. It is therefore clear that -- even if BellSouth were willing to provide UNE combinations -- it has not yet developed the capability to do so.

25. Two facts demonstrate that BellSouth is unable to provide nondiscriminatory access to existing UNE combinations in commercial volumes. First, all orders must be submitted manually, because BellSouth has failed to modify its EDI interface to permit CLECs to place orders electronically. Indeed, Mr. Stacy admitted in his OSS affidavit in this proceeding that BellSouth has "not yet undertaken" development of the modifications of its electronic interface that will be necessary to permit CLECs to order UNE combinations:

The changes BellSouth would have to make to our electronic interfaces to accommodate UNE combinations would include modifying them to accept a new UNE order type, and substantial inventory and billing changes Since BellSouth is pursuing its legal disagreement with the FCC position on providing